

COMMISSIONERS' APPROVAL

CHILCOTT *g*

LUND *Btl*

THOMPSON *AT*

TAYLOR (Clerk & Recorder)

Date.....October 10, 2006

Members Present.....Commissioner Greg Chilcott,
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board met for various administrative matters which included the following:

Maintenance Supervisor Brian James and Detention Supervisor Lt. Cathy Powell were present to discuss the 'hot water booster' that is needed in the jail kitchen in order to bring the water temperature up the required temperature. The booster, plus the electrical work will cost \$3,800.00. Brian stated they have the money allocated in a budgeted line item and this will bring the water temperature up to code. The Board agreed this equipment should be added.

The Board met with Environmental Health Director Theresa Blazicevich in regard to the contract for Tetra Tech in order to remove the underground tank at the Bibler Building the county previously purchased from Jim Parker and Helen Bibler. Commissioner Lund stated Civil Counsel feels Parker and Bibler are responsible for this tank removal due to the fact they knew the tank was there prior to selling the building to the county. Commissioner Lund stated she wants the county to have this done so it is done properly. They can then seek reimbursement of the costs from Parker and Bibler.

Theresa stated Jim Parker advised her and Brian Jameson that he would not remove the tank and he would fight the county if they require it done. Theresa stated this tank needs to be removed, as it was not properly closed. She found fuel at the bottom of the tank and therefore the tank is still volatile. (Theresa worked for the State of Montana under the "underground Tank Removal Program" for several years). She stated both she and another Environmental Health Employee will be watchful when the tank is removed, but the contractor is well equipped in this area. She will notify the City of Hamilton Fire Chief when the removal is going to happen.

Commissioner Lund made a motion to hire Tetra Tech to remove the underground fuel tank in the amount of \$1,631.00. Commissioner Thompson seconded the motion and all voted "aye". Theresa will find an excavator which will be an additional charge.

Commissioner Lund made a motion to grant final approval to Sunnyside Orchards Block 4, Lots 14-15. Commissioner Thompson seconded the motion and all voted "aye".

Commissioner Thompson made a motion to grant final approval to Summerdale Orchards Block 4, Lot 23 with the pro rata fee at zero due to the calculations. Commissioner Lund seconded the motion and all voted "aye".

Commissioner Lund made a motion to grant final approval to the Harrington Acres Subdivision. Commissioner Thompson seconded the motion and all voted "aye".

Commissioner Lund made a motion to have the Chairman sign the appendix and exhibits for the GSK Training Grant. Commissioner Thompson seconded the motion and all voted "aye".

In other business the Board met for a Request for Commission Action on the Meadow Vista Tract Lot 13, Expedited Minor. Minutes of that meeting are as follows:

Ravalli County Board of County Commissioners (BCC)

Meeting Minutes for October 10, 2006

9:00 a.m.

Commissioners Meeting Room, 215 S. 4th Street, Hamilton, Montana

1. Call to order

Commissioner Chilcott called the meeting to order at 9:00 AM.

2. BCC and Staff

(A) BCC

Greg Chilcott (Present)
Alan Thompson (Present)
Betty Lund (Present)

(B) Staff

John Lavey

3. Public Meeting

(A) Meadow Vista Tracts, Lot 13, AP (Johnson) Expedited Minor Subdivision

(i) Board action on the Subdivision Proposal

(a) Board Decision

Commissioner Lund made a motion to **approve** the Meadow Vista Tracts Expedited Minor subdivision, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report with the following amendments:

1. Amend Condition 4 to state that a \$250 contribution shall be made to the Florence-Carlton School District for the new lot prior to final plat approval.
2. Amend Condition 5 to state that a \$500 contribution shall be made to the Florence Rural Fire District for the new lot prior to final plat approval.
3. Amend Condition 8 to state that an Elevation Certificate (EC) shall be provided for Lot 13A and Lot 13B. The EC for Lot 13A shall be reviewed by the Ravalli County Floodplain Administrator for sufficiency only and not for compliance with the Ravalli County Floodplain Regulations. The EC for Lot 13B shall be subject to the review and approval of the Ravalli County Floodplain Administrator, and for compliance with the Ravalli County Floodplain Regulations.

Commissioner Thompson seconded the motion and the Commissioners voted 3-0 to **approve** the subdivision.

The Board met with numerous staff members in regard to the priorities of Civil Counsel James McCubbin. Staff included: Planning Director Karen Hughes, County Attorney George Corn, Environmental Health Director Theresa Blazicevich and Road Supervisor David Ohnstad. Numerous citizens were also present.

George stated part of what should happen in this discussion is the need to 'format' the civil requests. This format would include information that is needed by an attorney so the attorney does not have to do all of the research in order to put the case or information together.

Karen stated enforcement of issues is complaint driven and due to their work load they are not able to address these complaints the way the citizens wish they would. She stated after they send letters and receive no response from the responsible party, they need to have some assistance from the County Attorney's Office in moving forward on enforcement. Karen stated their office would have no problem formatting the request for enforcement assistance.

George agreed there needs to be some progression in the compliance issues, either civil or criminal. He cited the manner in which the Conservation District handles their enforcement issues, which is an excellent model for the county to follow.

There was some discussion on the progression of steps that needs to be implemented and who should receive them prior to the County Attorney's Office. George stated some compliance issues can be addressed by the actual office and the Commissioners Office. If there is a legal opinion to be rendered, then the Civil Counsel can review this based upon the Commissioners' request.

Theresa stated the Environmental Health Office utilizes the Board of Health for compliance issues. After their review and action they might be forced to utilize the County Attorney's Office for further enforcement or litigation.

George stated there are some issues the County Attorney's Office would become involved in very quickly, and most staff members know when that immediate action should be triggered.

Karen stated the other issue is obtaining legal counsel's advice so they can circumvent further enforcement or litigation issues. She stated James struggles with the needed time that Planning Staff requires for the discussion. George indicated planning issues have taken most of James' time this past year. This year has been unprecedented in regard to the amount of civil work. He also noted he asked for additional monies for contract attorneys in this budget but does not know if that was funded.

Commissioner Thompson stated all counties suffer from the unprecedented work particularly in regard to the planning issues.

Theresa stated other counties have utilized an enforcement officer which helps to collect the evidence needed for the compliance and or litigation issues. She stated Lewis & Clark County utilizes an enforcement officer and it works well. Karen noted many of their issues of Planning and Environmental Health overlap and an enforcement officer might be a good fix. George indicated it might be a good time to review that type of position but it is important to have the right person collecting the evidence and written testimony in case the issue goes to court.

Commissioner Chilcott indicated if they are going to start 'formatting' the requests of enforcement issues, there needs to be some training for the staff. Karen stated their issue is finding staff time in order to put the format together. She stated sometimes they need legal counsel's opinion on how to move forward or not move forward on all types of issues. Many times the legal opinion will assist their office in how they move forward on certain issues. George concurred many of the issues Karen has listed needs to be addressed by legal counsel. Karen stated their list has been sorted through and either needs policy or legal counsel's opinion.

In regard to the Environmental Health issues, George concurred the Board of Health should address these issues first. If a legal question comes up, then it can be sent to Civil Counsel. The Board of Health should set their policy decisions.

Commissioner Chilcott felt many of the policy issues and regulations need legal counsel's advice. George concurred, but stated any questions need to be listed and written out for the attorney to address. Attorneys should not be required to sit through the policy discussions and brain storm with the board. Rather we need to use the attorney's time in an efficient manner. Karen stated they take that approach, but the problem is that Civil Counsel is currently overwhelmed and does not have the time to address all of their issues.

George commented that he has not seen his budget yet so he is unaware if he has any monies to utilize contract work. Karen stated she understands the limited resources the County Attorney's Office has. George stated if he had known there was this much of a back log in planning he would have questioned whether the three-day conference James attended for planning was worthwhile. Those three days would have equated to 24 hours of research for the planning issues.

Commissioner Chilcott stated it was the Commissioners' decision to have James attend this three day conference because it gave him the tools to look at these issues.

George stated his office has some very pressing issues with assaults, domestic violence and D.U.I.'s, and if these planning issue were so critical, they should have been addressed during the budget presentations. Karen stated she has always presented the request for more civil counsel assistance. The Commissioners prioritize the ability to provide the necessary hours of civil counsel's request.

George stated the whole issue comes down to resources and setting the priorities of issues they need to address. The Commissioners need to set the policies for prioritization.

Commissioner Lund stated she needs to review Karen's list as there might be some policy issues they could address.

George reiterated the amount of issues that have come forth this year, particularly since it is an election year. The Clerk & Recorder and the Study Commission have utilized much of their time, and that time was necessary.

Discussion included what types of issues may arise due to the November 7th General Election and the meeting of the State Legislators. George commented that the Legislators have not done well in addressing the growth issues in the Western Montana Counties.

It was agreed that the 'format' and questions should be given to James in writing and policy issues should be handled 'more in house'. George stated the County Attorney needs the enforcement progression by 'format' so they have a more efficient manner in which to review it.

Citizen Marie Arnott stated a legislator should be present for this discussion so they can help deal with this at the state level. She asked if they could address an illegal subdivision that Terry Nelson is involved in. They live on the road where this illegal

subdivision is occurring. It was noted this issue was one of the three or four issues that has been referred to the County Attorney for enforcement. Marie noted three or four parcels have been sold to people who are not family members. She also stated the mile of the road has not been improved.

Karen stated this is one issue the Planning Staff has addressed with Civil Counsel. Marie noted this issue has been occurring for over two years. Now two years later, with no enforcement, they are still addressing this illegal subdivision. Now three lots have been sold with four more lots with 'For Sale' signs on them. The road is deteriorating due to the trucks bringing in the construction material. Marie stated Terry Nelson should be held accountable. She asked who was going to make him obey the law.

George stated the Commissioners need to prioritize these enforcement issues so the County Attorney's Office can move forward on the litigation.

Marie asked how a person can obtain a family transfer (subdivision exemption) then sell the lots 7 months later. Is there some review before the permits are issued? Tom Arnott stated these lots are not being sold to family members, they are being sold to the general public. He asked why have a process, approved under the law, then not uphold the process and law. He asked if Terry was exempt from the process and law. Obviously so, as the county does nothing, when they know there is a violation of the law.

George stated there is a time line on selling the lots. Marie stated the time line is not 7 months and it is obvious there was no intent of a family transfer.

Commissioner Lund stated she sees three things that need immediate attention: Spang Agricultural Covenant, Nelson Family Transfer and Illinois Bench Zoning.

Commissioner Chilcott stated he will visit with James in order to prioritize these issues.

Marie stated as early as July 15, 2005; Civil Counsel noted an evasion of intent to sell by Terry Nelson. Marie stated by the time this gets resolved, will he sell the other four lots? George stated he would need to review this in order to see what can be done.

Commissioner Lund stated they have to finish the subdivision regulations. Marie stated that is why these types of issues get out of hand. People know the Commissioners are busy and that is why people do what they do and get away with things. Marie stated as a tax payer they have to have some satisfaction, and Ravalli County does not provide that.

Commissioner Thompson asked if they can write a letter to Terry Nelson in order to put him on notice so that no more lots will be sold. The Commissioners advised Glenda to write a letter to Terry Nelson in this regard.

Terry Nelson stated he received a letter from the Commissioners and he answered it. He stated would like to be notified of any issues that have arisen but he did not know this issue was even going to be talked about today.

Willie Schrock stated they elect the Commissioners to handle these types of issues. He stated James should be dealing with legal issues not setting policy. The Commissioners should be dealing with policy. Willie advised the Commissioners they could cut their work load down by addressing policy and making a decision. The public should be part of the solution and the public should be included in those policy decisions.

A resident of Mill Creek addressed the logging yard in Mill Creek (Ms. Worden). It was noted Theresa will address the environmental health issues at tomorrow's Board of Health. She stated Mr. Olsen (the owner of the property) has brought in more people living on site and agreed it needs to be addressed by the county. Theresa stated the Board of Health should address the health issues as they have enforcement powers. Ms. Worden asked about the logging portion of the business. Commissioner Chilcott stated the county can not enforce a zoning regulation that does not exist. Ms. Worden stated the public nuisance and decay issue was addressed by the Commissioners and Mr. Olsen has consistently violated the Commissioners orders. She stated the record shows the previous tenants left because the Commissioners said they would enforce the public nuisance law. Now with new tenants, the Commissioners need to become involved in the continuing violations the new tenants are creating. Commissioner Lund stated they will re-visit this issue after the Board of Health meeting.

Kevin Elliot asked if there was public nuisance issue in the Mill Creek logging. Commissioner Chilcott stated they can enforce the health issues but he is not sure about the logging issue. George stated public nuisance is a blunt tool and it can be utilized against businesses. He is not familiar with this case as James handled the other tenant who was involved in logging. He stated there might be other laws that would be better utilized in regard to the logging yard.

In other matters the Board met to discuss the road research that is occurring by volunteers in regard to legal status of county roads in general and in particular, for subdivision review as well as legal and physical access issues for subdivisions. This discussion occurred at a previous meeting on June 29, 2006. Ron McCann, one of the volunteers was present to discuss the original road research list. He stated they have specific ways a road becomes a county road either by petition, the book of maps, plats etc., or by subdivision plats for dedication. But there are other roads that have been taken over and maintained by the county that they have some questions on. Those 'questions' are a 750 page list. 60% of the 750 page list has not been ascribed a definition of or a name. The most important thing is if the Commissioners want them to continue doing the research and giving people the information they are asking for. Otherwise, they will not be volunteers anymore and the Clerk and Recorder can deal with the research. Ron indicated with the work they have done, Ravalli County is one of the leading counties in Montana for this type of information on roads. But the problem remains; they can not answer the questions asked of them by the general public in regard to defining the roads due to the differences of opinion (between Charlie Wright of Missoula County and Civil Counsel James McCubbin).

Deputy Clerk and Recorder Tena Miller stated these volunteers are an integral part of knowing and understanding the road issues. She stated the volunteers have more knowledge and have quicker references than their office staff does. Ron stated it takes at least 2-3 hours to research two roads. They have data research they can not even log in because they don't know if some of those roads are even county roads. Missoula County has four full time people and Ravalli County only has two part time volunteer people, yet we are far ahead of Missoula County.

Road Supervisor David Ohnstad stated they have addressed this issue many times by memo. There has been a failure to address these issues properly and numerous citizens come and share their anger over the issues. Some of these issues (like Bear Creek Trail) end up in court and the court states the Commissioners need to take affirmative action in defining the county roads. In the early 1900's and recently in the 50's and 60's, the Commissioners signed off on a series of maps to define those issues. In the opinion of Charlie Wright who is an expert on road law, those documents provide affirmative action by the Commissioners to establish or determine the county roads. The rules shouldn't change when you leave Missoula County and enter Ravalli County. David stated they should ask the Attorney General to review those documents in order to clear up the dispute in regard to the affirmative action by the Commissioners some years ago.

David stated Charlie Wright has commented on the great work these volunteers have done, and also remarked our road research should be a model for the remainder of the state. Thus, we should work with Attorney General for his opinion so we have a definitive basis in order to move forward.

Tena reiterated they do not want to answer questions from the public about the definition of a county road unless the county does something like David is referring to. Planning Director Karen Hughes agreed this is a detailed morass of discovery that is needed for subdivisions. Staff agreed there needs to be a resolution to this issue.

David stated the county has operated some of these roadways for over 130 years. And to come now and say (as James McCubbin has stated) the 'history of the past road operations' does not matter; is not a good situation. There is a disparity of opinion across the state, but all counties have agreed that the Attorney General should be asked for his opinion.

Commissioner Lund stated the Attorney General opinion would take two years and the Commissioners have in good faith maintained those roads. She stated the Commissioners should put their feet down and make a decision. George stated there are some real problems in Ravalli County due to the orchard tracts. He mentioned that Colleen Dowdall who is an expert in roads, predicted as early as the 1980's, that Ravalli County would have problems. County roads are defined in the Montana Law. While the Attorney General opinion may be appealing, the time it takes for us to present the actual issue to the Attorney General is quite a bit. In regard to Bear Creek Road and the Kelly Case; the court cited they turned out to be a public right of way, not a county road. The public right of way limits the width of what we can use. George stated these are

complicated issues in Montana Law and under our regulations it might not be necessary to have a county road, but rather the utilization of a public right of way with a particular width. He stated he understands these issues are frustrating for the volunteers, and some times litigation provides the conclusive proof. One of the solutions may be to change the language in our regulations to accommodate this. They could also look to a legislative fix in regard to the use and amount of right of way due to the private property right issue.

David stated the county will always have people that sue. At the same time, they have, and continue to have, a very positive and pro active relationship with the Forest Service in accepting jurisdiction and easement for particular roads. George stated what David is saying is not squaring with what the legislators have said as some of those roads that the Forest Service did were not squared with the law.

David stated to the average person, when they see these agreements of easement and jurisdiction, think all the issues are 'set in stone' so to speak. When in fact the court may rule otherwise. David stated he believes what the Board of County Commissioners did 100 years ago constitute affirmative action defining those as county roads.

George stated David is incorrect as to what is a county road. The state law defines a county road, and any litigation that has come about addresses the private property rights, and unless those laws were followed it is not a county road. The Kelly case is a perfect example of that, as was the Bear Creek litigation. You can not short cut people's property rights.

David stated 50 miles north of Ravalli County, they have been successful in the courts of law. George stated each case is unique and if you want the roads looked at; review them according to the law. The Commissioners can not wave their wand, as they are all individual cases. He stated they can review the subdivision regulations but he will not involve the Commissioners in endless litigation due to David's opinion.

David stated there needs to be some definitive direction as to how these roads will be addressed so when questions are asked they can move forward. To say one must prove they follow the legal definition is not beneficial. In his discussion with Charlie Wright it does not appear to be as big of an issue as George is making it. George stated Missoula County does not have the Apple Tract (Orchard Tract) issues. He stated it would be nice to address these issues in one fell swoop, but they need to be treated on an individual basis.

Karen stated she has been working with James in order to change the subdivision regulations to address the requirement in order to deal with the roads. George stated the county will always be reviewing this. Missoula County is working through a 2.3 million dollar suit due to an oversight to the liability and law.

Ron stated he has been to one of Colleen seminars, but for those of them that are in the trenches; can they use the maps or not, can they use the subdivision dedications or not? He stated he can not answer the questions on what a county road is or is not. If it is not

black and white, how can he continue to do the research and what does he research if he does not understand how to research it?

George stated he always goes to the Clerk and Recorders Office for research or through Gary Evans and these volunteers. All the staff can do is tell the person what the research bears out on the road. But the person needs to make their own call. He stated it is not the responsibility of the county to make certain determinations on roads if they in fact need to be determined by the courts. George also stated the Road Department is still maintaining the roads so they are not bogged down. Karen stated it has bogged down some subdivisions. George stated the regulations can be modified; just show the access. This is not a legal issues, it is a policy decision by the Commissioners.

George stated Montana Law 7-14-2103 defines county roads. Section 3 a gives a shortened procedure to accept a county road which has been laid out with county funds. A survey is not required for those that have been accepted by resolution by the Commissioners.

David asked if there is a pool of contractors or attorneys who can look at this research on the individual roads. And could a summary of the information be given to George, and would that be helpful. George stated one of the important issues is how they handle it when you go out to do any different types of maintenance. David stated they went to Meridian Road and did just that. One neighbor had a 'burr under his saddle' and that made the whole project come to a halt. He stated he understands what George is saying, but the legal points could be carried out for decades. David stated the Road Department has some interest in providing resources to provide for the task of legal research. He asked if the County Attorney's Office would be able to utilize that road research.

George stated the research can only be done on a road by road basis. The idea of changing the subdivisions regulations by restrictions makes good sense. And the person(s) who should bear the burden of these costs would either be the developer or the general tax payer.

George stated the road researchers can only say it appears to be a county road, but sometimes it takes a legal option on each and every road to review it. And maybe it takes legislation to determine that definition. He stated it is hard to give the researchers guidelines when there are books written about it. Ron stated they could be spinning their wheels in the research.

George stated if the Commissioners want more definitive answers, then they need to put more resources in the Clerk and Recorders. He stated he can not give civil advice to private individuals. If they are asking about the status of a road because they want to 'cut their neighbors rights off', then they should be sent to an attorney. It is not the county's place to do all of that research.

Commissioner Chilcott stated they should 'just give the people what their research bears out' but the citizens should make their own decision or seek their own legal counsel.

Developer Donald Morton addressed a subdivision that he was asked to supply the information about the roads and connectivity of the roads in his area of development.

Developer's Consultant Terry Nelson asked if they could hold one public hearing for numerous roads. Ron stated they would have a hard time supplying all of the information as some information does not exist due to missing documents that are old.

Ron stated they are looking for something to 'hang their hats' on in order to do the research and they have no right to tell anyone whether it is or is not a county road. He can simply supply the data. He stated he does not like to not supply the information. He stated if they can not get a definitive answer they are going to 'pack their tents' and go home. He does not like the frustration that exists because they do not have any direction.

Road Researcher Gary Nelson stated he is not computer literate and he has pages of information that needs to be put into the data base. If any thing happens to Ron, the information will not be put into the data base. Ron stated he still does not know where to go from here. George stated that is a policy decision for the Commissioners.

David asked if it is feasible if the right person, whom George has confidence in, could answer certain questions on roads in regards to easement, alignment and collector roads. George stated that is a practical and reasonable resolution to the questions and it should be undertaken.

Ron stated he is still hung up on what their roles are, as this would be a different approach to what they are currently doing. Both Gary and Ron agreed they could do the research on the collector roads, but asked if they continue doing the other research and obtain a firm set of criteria.

Commissioner Chilcott stated the research and data collected on all of these roads is important and he would like them to continue in those efforts. The question is who would make that final determination; and that might be the courts.

George stated the researchers should not make a legal opinion if it does not follow the easy ones like the petitioned county roads. But anything other than that type of road, do not render an opinion.

In the meantime David will present a list of the collector roads to the road researchers. Then each road will be addressed by someone who George feels comfortable with in order to establish this process. David stated he has some funds that can be utilized in this regard.

George also suggested Karen review the necessary changes needed in the subdivision regulations.

In other business the Board met to continue their discussion from the October 4th meeting in regard to the subdivision regulation revisions required by Senate Bill 116. Present at this meeting was County Attorney George Corn and Planning Director Karen Hughes. George presented a draft memo to the Commissioners in regard to his opinion. His memo followed up on James' memo of September 29, 2006. George feels it would be inequitable to allow applicants to proceed under the sufficiency review. He sees the need to have the subdivision regulations done immediately, and suggested they put a deadline on for November 9th. He stated for those applicants that wish to proceed, they can sign a hold harmless agreement. He stated he just received an email from Myra Shultz (advisor to MACo) and Myra stated Lewis and Clark County has not adopted their regulations either. Montana Lobbyist Michael Kakuk who represents the Building Association, has the opinion that allowing subdivision applications to be processed under the old regulations would be illegal. However, George feels if the applicants want to proceed, they would have to sign the hold harmless agreement and an indemnification.

Commissioner Thompson addressed several points to George's memo along with the 30 subdivisions that are in the process. He stated the applicant needs to decide to either wait 30 days or proceed with the proper indemnification.

Commissioner Chilcott asked if the county could compel the applicants to sign the indemnification.

Karen stated they are only changing the procedure and a few minor design standards. Karen stated the November 9th deadline is tight but she is sure they can accomplish the changes by then.

Commissioner Chilcott called for public comment.

Jason Rice of Landworks Consulting asked if Michael Kakuk understands some of these applications have been in the works for over 10 months. He stated other county regulations have been broken in order to get to this point. George stated he is unsure if Michael knows this information or not. He stated it is unfortunate the regulations were not changed by October 1st. He feels his advice given by today's memo is the best course of action.

Terry Nelson stated he has a lot of questions. November 9th seems a bit ambitious particularly since the staff has had over a year to do what needed to be done. He asked what the ramifications are if someone continued on, signed the indemnification and then sued. What about the subdivisions being put on hold, will they follow the new regulations, what status are they under, and what is the status of subdivision exemption applications.

Karen stated in terms of exemption applications, she asked for counsel's advice a couple of weeks ago. George stated he will have to review that request as he is not sure where the exemptions will fall. Karen stated in terms of staff processing, they would continue to process the subdivisions when they are sure the changes will not have any impact.

Basically these are mostly procedural issues but one issue will address the information that is requested at the time of application.

Terry asked what happens if someone sues the county; would they be required to submit a whole new submittal. George stated that might be a mute issue because the litigation might not come forward for several months. Terry stated most of these 30 subdivisions are where they are now because the county has not followed their own time lines. Commissioner Chilcott stated if due diligence was shown on the application then new fees probably would not be charged. Commissioner Lund and Commissioner Thompson concurred.

Jim Perston asked at what point in the process the applications meet the sufficiency. Karen answered when all items are determined to be complete by the Planning Staff.

Attorney John Tabaracci stated he represented the developers of the Sunnyside Orchards development. He noted that many of these have been in the process for quite some time. Time is one thing, but the uncertainty of what the regulations are going to say is the big concern. He asked what sort of requirements will be included in the new sufficiency. He has asked for drafts from the planning staff but has not gotten any response. Last week he addressed SB 116 in regard to the vesting date of local regulations with one of his clients. John stated it is his opinion that the developer is vested when the application was filed. He stated now vesting happens when the sufficiency review is done. He noted that Senate Bill also has a bifurcated review allowing the county the ability to deal with the new rules being in effect October 1st. Therefore his argument is that the existing rule that preceded the Senate Bill allows the developer to be vested under the rules at the time they were filed.

Attorney Bill VanCanagan represents the Flat Iron Ranch Subdivision that is within the current subdivision process. They submitted their application in June 2006, and the subdivision has not yet been determined to meet sufficiency. He then submitted a letter addressing his view of the law that applies to this situation which stated in part 'that the applicability of 7-21-1003 (2) MCA is outside the platting act, but decided upon by legislators when they changed the platting act'. His letter states the review and approval with conditions, must be based solely on the regulations in effect at that time. Thus it is clear that the legislator intended to supplement the law, removing it from 501(2) of the Subdivision Act. Therefore, commencing from October 1, 2005 through October 1, 2006; those applicants in the pipe line are allowed to be treated under the old law. He asked George to review that legal opinion. He stated he appreciates the burden placed on the Commissioners but it is difficult for them and their clients to have these subdivision applications in the system for this long period of time which includes the financial investments. Bill stated the problem is not just the uncertainty of what regulations the county places them under, but in light of the law (as he interprets it), the subdivisions in the pipe line are not subject to the new regulations. Therefore he asked the Commissioners not to further delay these subdivisions that are pending sufficiency, as it would be un-equitable for them to assume that burden. He also felt the process should continue on as mandated by the legislators.

No further public comment. Board deliberation then took place.

George stated Myra Schulz did not critique James' opinion. There seems to be a big disagreement of what the law states. He feels there is some un-certainty and if the developers are so certain that their opinions are correct, then they should be willing to proceed. George stated his direction is the middle course that does not 'walk the commissioners off a pier' so to speak. Since the regulations were not adopted by October 1st, he is advising the Commissioners to take this middle course that he has suggested in his memo.

Jason stated they did some research with Missoula County and he found Missoula County lives a 'stress free life when it comes to litigation and fear of being sued'. Missoula County determined anyone who has submitted prior to the October 1st deadline, has the choice to be under the old or new regulations. Those found sufficient prior to October 1st are required to follow the old regulations. Any thing that has a pre-application after October 1st is under the new regulations. Missoula County has never been challenged.

George stated he called Attorney Michael Shaystad of Missoula County, and Michael helped him formulate this middle course of action. George stated Missoula County completed their changes and required adoption prior to the October 1st deadline. He stated Ravalli County's course of action should be to take the equitable approach.

George stated these other points raised here today need to be reviewed and he can not do it in 10 minutes. He would need to review the exact working of the hold harmless and indemnification agreement. Most of the case review that continue would be handled by all of the County Attorney's Staff.

Commissioner Chilcott stated he does not want to expedite a deadline that produces an inferior product. Karen stated the Planning Board will be involved in this process in order to avoid subsequent and second public hearings.

George stated the Area 3 Plan will be held in front of the Planning Board on October 18th. He also stated it is important to meet the letter of the law, but to also meet the spirit of the law when it comes to allowing public participation. Commissioner Chilcott concurred.

Commissioner Lund made a motion to set the public hearing on Senate Bill 116 revisions on November 9th at 10:00 a.m. Commissioner Thompson seconded the motion and all voted "aye". Commissioner Lund suggested Karen look at utilizing a larger room such as the Event Pavilion Center at the Fairgrounds.

Commissioner Thompson asked how they should direct Karen to proceed with the subdivisions that are in the process. Commissioner Chilcott suggested they implement the memo from George received today in draft form as far as the procedures until they adopt the new regulations.

Commissioner Chilcott stated the Commissioners priority is to get the regulations done, and done right, before everything else.

The meeting was adjourned.

In other business Commissioner Lund attended an Economic Development meeting during the afternoon hours.